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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,289	12/19/2000	Luc Montagnier	3495.0068-10	3312

22852 7590 07/22/2002

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EXAMINER

PARKIN, JEFFREY S

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 07/22/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,289

Applicant(s)

MONTAGNIER, L., ET AL.

Examiner

Jeffrey S. Parkin, Ph.D.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 01 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Restriction Requirement

35 U.S.C. § 121

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

5 a. Group I, claim(s) 1 and 2, drawn to an isolated **immune complex** comprising an antigen (e.g., gp300, p200, p90/80) and antibody, classified in class 436, subclass 536.

b. Group II, claim(s) 3 and 4, drawn to an isolated **antibody** that binds to gp300, p200, p90/80, classified in class 530, subclass 387.1.

10 c. Group III, claim(s) 5, drawn to an immunogenic composition comprising **gp300, p200, or p90/80**, classified in class 424, subclasses 188.1 and 208.1.

15 d. Group IV, claim(s) 6-14, drawn to a **method for detecting HIV-2 antigens**, classified in class 435, subclass 5.

e. Group V, claim(s) 15-17 and 20, drawn to a **method for detecting HIV-2 antibodies**, classified in class 435, subclass 7.1.

20 f. Group VI, claim(s) 18 and 19, drawn to a **diagnostic kit** for the detection of HIV-2 antibodies, classified in class 422, subclass 61.

2. The inventions are distinct, each from the other because of the following reasons:

25 3. Inventions I-III and VI are all unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (M.P.E.P. §§ 806.04 and
30 808.01). In the instant case, each of the identified groups is directed toward structurally and functionally unrelated biomolecules (e.g., immune complex, antibody, antigen) or products (e.g., diagnostic kits) comprising disparate components. Separate searches will also be required for each of the identified groups.

Accordingly, the inventions are clearly directed toward patentably independent and distinct subject matter.

5 4. Inventions I/III/VI and IV are unrelated. Inventions are
unrelated if it can be shown that they are not disclosed as capable
of use together and they have different modes of operation,
different functions, or different effects (M.P.E.P. §§ 806.04 and
808.01). In the instant case, the methodology of Group IV neither
requires nor uses the products of Groups I, III, or VI.
10 Accordingly, the inventions are clearly directed toward different
inventive concepts.

15 5. Inventions II and IV are related as product and process of use.
The inventions can be shown to be distinct if either or both of the
following can be shown: (1) the process for using the product as
claimed can be practiced with another materially different product
or (2) the product as claimed can be used in a materially different
process of using that product (M.P.E.P. § 806.05(h)). In the
instant case, the product of Group II can be employed in a number
20 of materially different processes such as affinity purification
procedures.

25 6. Inventions I/II/VI and V are unrelated. Inventions are
unrelated if it can be shown that they are not disclosed as capable
of use together and they have different modes of operation,
different functions, or different effects (M.P.E.P. §§ 806.04 and
808.01). In the instant case, the methodology of Group V neither
requires nor uses the products of Groups I, II, or VI.
Accordingly, the inventions are clearly directed toward different
30 inventive concepts.

7. Inventions III and V are related as product and process of use.
The inventions can be shown to be distinct if either or both of the

following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the product of Group III can be employed in a number of materially different processes such as affinity purification procedures.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, requirement for independent searches, and recognized divergent subject matter, restriction for examination purposes as indicated is proper. Applicants are required under 35 U.S.C. § 121 to elect a single group for prosecution on the merits. Applicants are also reminded that the claims should be amended, if necessary, to reflect the election.

Claim Cancellation

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Correspondence

10. The Art Unit location of your application in the Patent and Trademark Office has changed. To facilitate the correlation of related papers and documents for this application, all future correspondence should be directed to **art unit 1648**.

11. Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette,

1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242 or (703) 305-3014. Informal communications may be submitted directly to the Examiner through the following fax number: (703) 308-4426. Applicants are encouraged to notify the Examiner prior to the submission of such documents to facilitate their expeditious processing and entry.

12. Any inquiry concerning this communication should be directed to Jeffrey S. Parkin, Ph.D., whose telephone number is (703) 308-2227. The examiner can normally be reached Monday through Thursday from 8:30 AM to 6:00 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner are unsuccessful, the examiner's supervisors, James Housel or Laurie Scheiner, can be reached at (703) 308-4027 or (703) 308-1122, respectively. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

Respectfully,

Jeffrey S. Parkin, Ph.D.
Patent Examiner
Art Unit 1648

17 July, 2002